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HAROLD B. WILLEY, Clerk

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1954.

No. 165

EVELYN LEADMAN, *Petitioner,*

vs.

THE GREYHOUND CORPORATION, *Respondent.*

PETITION FOR WRIT OF CERTIORARI, TO THE COURT OF APPEALS OF KENTUCKY.

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The petitioner, Evelyn Leadman, shows to the Court the following facts, upon which she seeks a writ of certiorari herein, to the Court of Appeals of Kentucky:

(a) On February 4, 1955, the Court of Appeals of Kentucky, delivered an opinion in a case before it, styled "The Greyhound Corporation, Appellant, vs. Evelyn Leadman, Appellee." This opinion has not been officially reported, and is held in abeyance pending the granting or refusal of this writ. The opinion is to be found at pages 87-88 of the certified transcript, and is appended to this petition in "Appendix A" *post.*

(b) The grounds on which this petition rests are:

(i) The judgment of the Court of Appeals of Kentucky, is contained in its mandate, which issued and was entered in said Court, March 25, 1955.

(ii) The Court overruled appellee's petition for rehearing in said case, March 25, 1955, and entered mandate and judgment the same day.

(iii) Jurisdiction is conferred on this Court to grant this writ by 28 U. S. C. A., Sec. 1651(3).

(c) The question presented is:

> Where one is seriously and permanently injured, while riding on a bus, operated by respondent, through an employed agent, as operator, through the carelessness and negligence of the operator, and sues both the owner of the bus, and the operator, and recovers a verdict and judgment against the principal alone, is she accorded "*due process*" by a Court that adjudges and holds that she can not have the fruits of her recovery, simply because the trial jury found nothing against the servant, and failed to find that the servant was negligent in the operation of the bus?

(d) The Constitutional provision on which petitioner claims her right in this instance, is that portion of the Fourteenth Amendment to the Constitution of the United States which reads and provides:

> "* * * nor shall any state deprive any person of life, liberty or property, without due process of law; * * *." (Constitution, Amendment XIV(1)).

(e) Evelyn Leadman, took passage at Lexington, Kentucky, for transportation, as a paid passenger, to Hazard, Kentucky. While the bus was travelling through

Breathitt County, Kentucky, and was crossing a bridge, over Quicksand Creek, it was so carelessly and negligently operated by respondent's servant that it overturned, seriously and permanently injuring her. She sued, in the Circuit Court for Breathitt County, Kentucky, to recover for her injuries, both against respondent and its servant, Hamm, the bus driver. The jury returned into Court, a verdict in her favor, against respondent, alone, for $15,000.00, on which judgment was entered. On appeal, as noted heretofore, the Court of Appeals of Kentucky held that since the trial jury had said nothing about the respondent's servant, the judgment against respondent was void. On a petition for rehearing the Court modified its opinion so as to decide that its holding did not violate the due process clause of the Federal Constitution, and overruled the petition to re-hear.

(f) The federal question, that is the applicability of the due process clause of the Federal Constitution, to the facts and circumstances of the case, was raised in the Court of Appeals of Kentucky, for the first time, in petitioner's petition for rehearing filed March 3, 1955.

(g) There is appended to this petition, as "Appendix B," a copy of the mandate and judgment of the Court of Appeals of Kentucky, entered March 25, 1955. There is also appended hereto as "Appendix C," a copy of the order of March 25, 1955, overruling petitioner's petition for rehearing.

(h) Petitioner first sued the Southeastern Greyhound Lines and Hamm to recover for her injuries. It was alleged that the bus on which passage was taken was

owned and operated by Southeastern Greyhound Lines, and that Hamm was a servant of that corporation, charged with the duty of operating the bus. Later it was made to appear that the Southeastern Greyhound Lines had transferred all its property and franchises to the respondent, and respondent then became a party to the action, as principal, and Hamm was left a party, as agent of the principal.

It was alleged that through the negligence of the agent, Hamm, the injuries to petitioner were brought about, and judgment was demanded against both principal and agent. On the trial of the case in the Circuit Court for Breathitt County, Kentucky, the Court charged the jury, *inter alia*:

> "You may find a verdict for the plaintiff against one of the defendants, and for the other; or, you may find a verdict in one amount against one of the defendants, and a different amount against the other; or, you may find a joint verdict against all of the defendants." (R. 47).

Under that instruction, the jury found and returned into Court, the following verdict:

> "We the jury do agree and find for the plaintiff, in the amount of fifteen thousand ($15,000.00), dollars against the Greyhound Corporation.
>
> (Signed): Linville Carpenter,
> One of the jury." (R. 41).

The Court of Appeals of Kentucky, ruled that petitioner could not have advantage of the judgment rendered on this verdict, because the trial jury had not, (a), found against the defendant, Hamm, the servant of the Grey-

hound Corporation, or (b), because it had not said he was negligent in the operation of the bus, although the bus turned over.

It is the position of petitioner, that the ruling of the Court of Appeals was erroneous, and denied her due process of law, under the facts and circumstances of this case, since the jury could not, and would not have found against the Greyhound Corporation, unless it believed that the turning over of the bus was due to the negligence and carelessness of Hamm, the servant of the corporation, and the operator of the bus, under employment by the corporation.

The Court of Appeals of Kentucky failed to take note of the following: (a) Petitioner could have sued the Greyhound Corporation alone, (b) and the operator of the bus was neither an indispensable, or necessary party to the action.

Wherefore, the premises considered, the petitioner, Evelyn Leadman, prays:

(a) That this Court may grant the writ of certiorari sought hereby, to the Court of Appeals of Kentucky; and,

(b) That on review, the Court may reverse the judgment of the Court of Appeals of Kentucky, and affirm the judgment of the Circuit Court for Breathitt County, Kentucky.

CLEON K. CALVERT,
Asher Building,
Pineville, Kentucky,
Attorney for Petitioner.

Pineville, Kentucky,
June 8, 1955.